



May 13, 2002

Ms. Tracy Karol
Public Information Officer
Williamson County Sheriff's Department
508 South Rock Street
Georgetown, Texas 78626

OR2002-2536

Dear Ms. Karol:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162771.

The Williamson County Sheriff's Department (the "department") received a request for information relating to the requestor and to an internal affairs investigation into the alleged mistreatment of the requestor. You inform us that you have released most of the requested information to the requestor but claim that the internal affairs investigation is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We must initially address the department's obligations under section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

It appears from the documents submitted to this office that the department first received a request for this information in September 2001 while the requestor was incarcerated. The department was not required to respond to this request. See Gov't Code § 552.028(a)(1)

(governmental body not required to accept or comply with request from incarcerated individual). However, this same individual again asked for information in a request received by the department on January 7, 2002. You do not assert that the individual was incarcerated at the time she made this request. Accordingly, the department was obliged to respond to the January 7 request and to timely seek a ruling from this office for any information it wished to withhold. The department did not request a ruling until March 6, 2002, well past the ten business day deadline mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely made, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information and must be released, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). Normally, a compelling reason is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Many of the exceptions in the Public Information Act (the "Act"), including the law enforcement exception in section 552.108, are known as discretionary exceptions because they are intended to protect only the interests of a governmental body and a governmental body can waive them, by choice, by providing insufficient facts and arguments to prove they apply, or by failing to comply with the procedural requirements of the Act. *See* Open Records Decision No. 177 (1991) (governmental body may choose to raise or waive law enforcement exception); *see also, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege), 551 (1990) (litigation exception serves only to protect governmental body's position in litigation and does not itself make information confidential), 522 at 4 (1989) (discretionary exceptions in general). Because a governmental body can choose to release information that is subject to a discretionary exception, such exceptions do not generally provide a compelling reason to withhold information. We note, however, that in Open Records Decision No. 586 (1991), this office concluded that a governmental body that failed to timely request a ruling from this office could nevertheless withhold information because its release would have interfered with criminal investigations being conducted by other governmental bodies. *See* Open Records Decision No. 586 (1991).

In the present situation, we have received no representations that release of this information would interfere with the law enforcement interests of another governmental body. Because the information at issue is not made confidential by law and the only interests at stake are those of the department, which waived its claim to the law enforcement exception by failing to comply with the procedural requirements of the Act, we conclude that the department has failed to overcome the presumption in section 552.302 that this information is public and must be released.

We note however, that some of the submitted documents contain motor vehicle record information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

We have marked the Texas driver's license number that you must withhold under section 552.130. Section 552.130 is intended to protect an individual's privacy interests. We have therefore not marked the requestor's motor vehicle record information because she has a special right of access to it. *See* Gov't Code § 552.023 (person has special right of access to information that would otherwise be withheld to protect that person's privacy).

In addition, we note that the submitted information contains social security numbers. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, the department must withhold the marked driver's license number. The social security numbers must also be withheld if obtained or maintained pursuant to a law enacted after October 1, 1990. All other information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

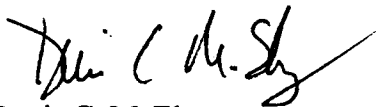
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis C. McElroy", with a long, sweeping horizontal stroke extending to the right.

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 162771

Enc. Marked documents

c: Ms. Debra Mason
c/o Williamson County Sheriff's Department
508 South Rock Street
Georgetown, Texas 78626
(w/o enclosures)